



The Commonwealth of Massachusetts

Department of Revenue

Lincoln Building,

100 Cambridge Street, Boston 02204

L. JOYCE HANPERS
COMMISSIONER

August 21, 1981

("Manufacturer") is a registered Massachusetts vendor that manufactures and sells data processing equipment. You inquire about the application of the Massachusetts sales and use taxes to sales by the Manufacturer in the following circumstances.

The Manufacturer sells equipment to a distributor ("Distributor") not registered as a Massachusetts vendor; the Distributor sells the equipment in turn to his Massachusetts customer ("Customer"). The Manufacturer ships the equipment by common carrier, F.O.B. place of shipment, directly to the Customer in Massachusetts. The place of shipment may or may not be in Massachusetts.

General Laws Chapter 64H, Section 2 imposes an excise on sales at retail of tangible personal property in Massachusetts by any vendor; "sale at retail" does not include sales for resale in the regular course of business (G.L. c. 64H, s. 1(13)).

Chapter 64I, Section 2 imposes an excise on the storage, use or other consumption in Massachusetts of tangible personal property purchased from any vendor for storage, use or other consumption in Massachusetts; "storage, use or other consumption" does not include the sale of tangible personal property in the regular course of business or the retention of tangible personal property for sale in the regular course of business (G.L. c. 64I, s. 1(4), (5)).

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Except where a seller takes a resale certificate in good faith from a purchaser who is a registered Massachusetts vendor, two presumptions arise: it is presumed that all gross receipts of a vendor are from sales subject to tax (G.L. c. 64H, s. 8), and it is presumed that tangible personal property sold by any person for delivery in Massachusetts is sold for storage, use or other consumption in Massachusetts (G.L. c. 64I, s. 8).

Section 1(13) of Chapter 64H provides:

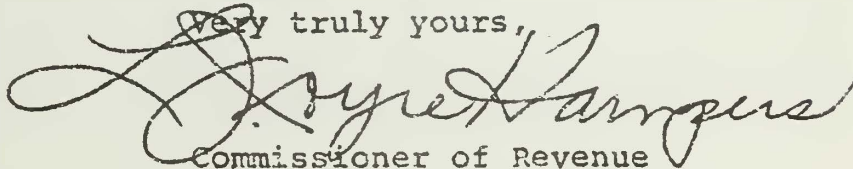
"The delivery in the commonwealth of tangible personal property by an owner or former owner thereof, or by a factor, or agent of such owner, former owner or factor, if the delivery is to a consumer or to a person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in the commonwealth, is a retail sale in the commonwealth by the person making the delivery. He shall include the retail selling price of the property in his gross receipts."

Based on the foregoing, it is ruled that:

1. If the Distributor is engaged in business in Massachusetts within the meaning of Chapter 64H, Section 1(5), it must register as a Massachusetts vendor and collect and pay over sales or use tax, based on the Distributor's selling price, on its sale of the equipment to the Customer; in such case the Distributor may give the Manufacturer a Massachusetts resale certificate in lieu of paying a tax on its purchase from the Manufacturer.

2. If the Distributor is not engaged in business in Massachusetts within the meaning of Chapter 64H, Section 1(5), the Manufacturer must collect and pay over sales or use tax, based on the Distributor's selling price, on its sale of the equipment.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Royce Langens", is written over the typed name "Royce Langens". The signature is fluid and cursive.

Commissioner of Revenue

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